into under a mutual mistake as to the assets of the corporation, not only flies in the face of the supposedly accepted note case of *Hecht* v. *Batcheller*,[24] but is also contrary to a square decision on similar facts in an earlier Minnesota case.[25] All these cases may, however, be explained on the basic fact test, *viz.*, that "where the parties assumed a certain state of facts to exist, and contracted on the faith of that assumption, they should be relieved from their bargain if that assumption (which was made by them the fundamental basis of their agreement) was erroneous." [26] In all these intermediate cases the parties have received the *thing* for which they bargained. There is no question of identity of subject matter. The error goes clearly to a fact which may be called collateral, or extrinsic;[27] but since that fact was taken by the parties as the fundamental basis of their agreement relief should be granted.

The attempt to reduce the question to a hard and fast rule of identity of subject matter, while it has the advantage of ease of application, has not worked out in practice; and the injustice its strict application would cause in some cases has led to ingenious but unsubstantial distinctions.[28] Whether the basis for the relief granted by the courts is the general feeling that a person should not be compelled to give up his property for much less than it is really worth, and that is inequitable for the other party to retain the fruits of an honest error;[29] or that there is a substantial failure of consideration, in that one party because of a mistake going to the essence is not really getting what the parties thought he was going to receive;[30] or that where both parties, though literally agreeing to the terms of the bargain, are grossly unaware of the actual facts, for the law to hold them to their obligations would be perpetrating an injustice almost as great as though they had never really assented to its terms—in any case the law is protecting an individual from the loss of his property through a transaction based on a fundamental assumption which is discovered to have been erroneous. The basic fact test seems to be sound. True, the rule is not easy of application; but it is the one which best carries out the intention of the parties, the understanding of merchants, and the interests of justice.

RECENT CASES

ADMINISTRATIVE LAW — JUDICIAL REVIEW — CONCLUSIVENESS OF FINDINGS OF FACT BY WORKMEN'S COMPENSATION COMMISSION UNDER DUE PROCESS CLAUSE. — In a proceeding under a Workmen's Compensation Act, the defense

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[24] 147 Mass. 335, 17 N. E. 651 (1888). See note 15, *supra*.

Sample *v.* Bridgforth, 72 Miss. 293, 16 So. 876 (1894); Kennedy *v.* Panama Mail Co., L. R. 2 Q. B. 580 (1867). See Roland R. Foulke, *op. cit.*, 197; STORY, *op. cit.*, § 219.

[25] Costello *v.* Sykes, 143 Minn. 109, 172 N. W. 907 (1919). But see St. Nicholas Church *v.* Kropp, 135 Minn. 115, 160 N. W. 500 (1916), where relief was given from a unilateral mistake of same kind.

[26] See 3 WILLISTON, CONTRACTS, § 1544.

[27] See ANSON, CONTRACTS, Corbin's ed., §187, note 1; CLARK, EQUITY, § 356.

[28] See Cotter *v.* Luckie, 1918 N. Zeal. L. R. 811; Gardner *v.* Lane, 12 Allen (Mass.) 39 (1866). And also 3 WILLISTON, CONTRACTS, § 1569.

[29] See Roland R. Foulke, *op. cit.*, 223; W. W. Kerr, *op. cit.*, 3 JURID. SOC. PAP. 173.

[30] See 3 WILLISTON, CONTRACTS, § 1544; 38 AM. L. REV. 334, 346.

was that the injury had existed before the commencement of the employment. After a hearing before the arbitration committee and a review of its findings by the Arbitration Commissioner, compensation was refused. The plaintiff appealed to the district court, which, on the evidence taken before the committee and the Commissioner, reversed the decision of the Commissioner. The defendant appealed on the ground that, since the evidence was conflicting, the findings of the Commissioner on questions of fact were conclusive. *Held*, that the judgment of the district court be reversed. *Hughes* v. *Cudahy Packing Co.*, 185 N.W. 614 (Iowa).

The decision in the principal case is in accord with the majority of state decisions relative to the conclusiveness of administrative findings of fact in workmen's compensation cases. But the Supreme Court has not decided whether such procedure affords due process. See, however, *Hawkins* v. *Bleakly*, 243 U. S. 210, 214-216. In cases involving postal privileges, the issue of land patents, and taxation, administrative findings of fact may be made conclusive in the absence of arbitrariness. *Bates and Guild Co.* v. *Payne*, 194 U. S. 106; *Johnson* v. *Drew*, 171 U. S. 93; *Hilton* v. *Merritt*, 110 U. S. 97. *Cf. American School of Magnetic Healing* v. *McAnnulty*, 187 U. S. 94. See E. F. Albertsworth, "Judicial Review of Administrative Action," 35 HARV. L. REV. 127, 136-143. It has even been held that the findings of immigration officials, when the fact in question is United States citizenship, may be final. *Ju Toy* v. *United States*, 198 U. S. 253. This position is extreme, however, and later utterances of the Court indicate that it will be astute to find any element of arbitrariness in the course of the proceedings. *Kwock Jan Fat* v. *White*, 253 U. S. 454; *Chin Yow* v. *United States*, 208 U. S. 8, 12. See Nathan Isaacs, "Judicial Review of Administrative Findings," 30 YALE L. J. 781. On the other hand, in proceedings regarding rate regulation there must be review by a court exercising "independent judgment." *Ohio Valley Water Co.* v. *Ben Avon Borough*, 253 U. S. 287. See L. Curtis, 2nd, "Judicial Review of Commission Rate Regulation," 34 HARV. L. REV. 862; T. P. Hardman, "Judicial Review as a Requirement of Due Process," 30 YALE L. J. 681. Judicial review of findings of fact in workmen's compensation cases would tend to defeat one of the principal objects of the acts, the furnishing of a cheap and speedy procedure, which, though perhaps rough, has been deemed more socially desirable than the more refined but, in practice, inadequate relief afforded by judicial justice. See Thomas R. Powell, "The Workmen's Compensation Cases," 32 POL. SCI. QUART. 542, 551-560. The need is obvious, and the Court will probably uphold this legislative conception of due process. See *Gundling* v. *Chicago*, 177 U. S. 183, 188; *Holden* v. *Hardy*, 169 U. S. 366.

ADMIRALTY — JURISDICTION — STATE WORKMEN'S COMPENSATION ACTS AS APPLIED TO MARITIME ACCIDENTS. — A carpenter, aiding in the construction of a vessel which had previously been launched on a river within the Federal admiralty jurisdiction, was accidentally injured in the course of his employment. He had previously accepted the provisions of a state Workmen's Compensation Act which provided an exclusive remedy. (See 1920 OLSON'S OREGON LAWS, § 6605; 1913 OREG. LAWS, c. 112.) He brings a libel in admiralty on the theory of maritime tort. *Held*, that the libelant do not recover. *Grant Smith-Porter Ship Co.* v. *Rhode*, U. S. Sup. Ct., October Term, 1921, No. 35.

A stevedore was injured in the course of his employment while standing on a wharf. He seeks to recover under an elective Workmen's Compensation Act. (1919 ME. LAWS, c. 238.) *Held*, that the plaintiff recover. *Berry* v. *M. F. Donovan & Sons, Inc.* 115 Atl. 250 (Me.).

For a discussion of the principles involved, see NOTES, *supra*, p. 743.

ADVERSE POSSESSION — AGAINST WHOM TITLE MAY BE GAINED — MUNICIPALITY — ADVERSE POSSESSION OF "ABANDONED" HIGHWAY. — The de-